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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket No. FCIC-13-0003]

RIN 0563-AC42

Common Crop Insurance Regulations; Pear Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Pear Crop Provisions. The intended effect of this action is to improve coverage available to pear producers, to clarify existing policy provisions to better meet the needs of insured producers, and to reduce vulnerability to program fraud, waste, and abuse. Changes are also proposed to the Optional Coverage for Pear Quality Adjustment Endorsement to broaden coverage available to producers to manage their risk more effectively. The proposed changes will be effective for the 2015 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-13-0003, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816)823-4694 or by email at rmaweb.content@rma.usda.gov.

Privacy Act: Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You

may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on

State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation, and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an

insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC directing the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published

at 7 CFR part 11, or 7 CFR part 400, subpart J for determinations of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background:

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising §457.111 Pear Crop Provisions, to be effective for the 2015 and succeeding crop years. Several requests have been made for changes to improve the coverage offered by clarifying and strengthening existing policy provisions, adding provisions to improve the integrity of the program, and revising the Optional Coverage for Pear Quality Adjustment Endorsement.

The proposed changes are as follows:

1. FCIC proposes to remove all references to section titles of the Basic Provisions. This information is currently contained in parenthesis following references to section numbers of the Basic Provisions throughout the Crop Provisions. The section numbers should provide sufficient guidance to locate the applicable provision.
2. Section 1 - FCIC proposes to remove the definition of “varietal group” and replace it with the term type, the unit structure will be by type as specified in the Special Provisions.

3. Section 2 – FCIC proposes to revise section 2 to allow optional units by irrigated and non-irrigated practices. Some northeastern regions have both practices available and this change will allow producers to insure their non-irrigated acreage separately from their irrigated acreage. Optional units will also be available by type if specified in the Special Provisions. This change is recommended to offer insureds additional risk management options and to be consistent with other perennial crop policies.

4. Section 3 – FCIC proposes to revise section 3(a) to allow different coverage levels and price election percentages by type. The risks may not be the same for each type of pear so this gives the producer an opportunity to tailor the coverage to the specific risks associated with each type.

FCIC proposes to redesignate section 3(c) and add subparagraphs (1) through (4) for determining production to count before and after the beginning insurance period if the producer fails to notify us of circumstances that may reduce their production guarantee. This language is proposed to clarify establishment of the production guarantee.

5. Section 6 - FCIC proposes a revision to section 6(c) to allow the insurance provider to consent to a different level of production than is specified in the Crop Provisions or Special Provisions. Currently the producer must get a written agreement from FCIC to obtain coverage. Under the proposed provisions, the Special Provisions may establish the production level or the insurance provider may approve a level of production in writing after completing an inspection. This change is proposed to allow the approval of the level of production to be made without a written agreement.

6. Section 8 - FCIC proposes a revision of section 8(a) for clarity of content and ease in reading. FCIC proposes to redesignate section 8(a)(2) as 8(a)(3). FCIC proposes revising the redesignated section 8(a)(3), which is the calendar date for the end of insurance by providing end of insurance dates by type. This proposed change better aligns the end of insurance period with the time the fruit will be mature and harvested. This proposed change may affect the APH databases' of some insureds that have acreage of summer or fall pears currently insured as "all others" making it necessary to reconfigure their databases. However, this change will provide consistency in classification and grading standards.

7. Section 9 – FCIC proposes to revise this section to clarify that losses due to insufficient or improper application of pest controls or disease controls are not covered causes of loss.

8. Section 10 – FCIC proposes to add a new section 10(a), to advise insureds that representative samples must be left in the event of damage. This provision is added to be consistent with other crop policies and allows insurance providers the opportunity to verify damage and its cause.

9. Section 11 – FCIC proposes to add an example at the end of section 11(b)(7) to illustrate the settlement of claim.

FCIC proposes to revise the minimum size requirement from 180 to 165 or smaller for California pear quality adjustment under section 11(c)(3)(iii)(A). This change was recommended by the California Pear Advisory Board to align with industry standards.

10. Section 13(b) – FCIC proposes to revise the coverage available under the Pear Quality Adjustment Endorsement. The current endorsement provides quality

adjustment for damage caused by hail that does not grade U. S. No. 2 or better in accordance with United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing. FCIC proposes revising the endorsement to include quality adjustment for all insured causes of loss for pears that do not grade a U.S. No.1 in accordance with the United States Standards for Grades of Summer and Fall Pears or United States Standards for Grades of Winter Pears. The United States Standards for Grades of Pears for Processing have been removed from the endorsement because processing pears are covered in the base policy. The proposed Optional Coverage for Pear Quality Adjustment Endorsement has also changed the grading standard from a U. S. No. 2 to a U. S No. 1. The change to insure a higher standard should prove to be more valuable to producers. This change was made at the request of producers who want to manage their risk more effectively. Premium rating for the changes in this endorsement will also be reviewed to establish appropriate premium rates to maintain actuarial soundness.

FCIC proposes removing references pertaining to all cull production as found at the end of provision 13(b)(2), 13(c), and 13(e). Currently, pears that are knocked down to the ground by wind, or that are frozen and cannot be packed or marketed as fresh pears are considered culls. The proposed quality endorsement will include all insured causes of loss, therefore, damage caused by wind or freeze will be covered. Under the proposed quality endorsement, pears grading a U. S. No. 1 will be production to count at the full value. FCIC proposes adding a new section 13(b)(3)

stating any production sold as U. S. No. 1 or better will be included as production to count under this option.

This change is proposed at the request of producers and industry personnel as the value of lower grade pears has diminished.

FCIC proposes adding a new section 13(d), stating that production to count under the endorsement will not apply in determining the producer's actual production history (APH). The APH will be based on all harvested and appraised marketable production from insurable acreage. This change is proposed in order to maintain consistency in APH reporting, as coverage is optional for the pear quality endorsement and can be cancelled in writing on or before the cancellation date; therefore, the APH can vary significantly from year to year.

FCIC proposes to include an example at the end of the endorsement to demonstrate how the quality adjustment would be administered.

Other minor editorial changes have been made to make the provisions more effective and consistent with other similar Crop Provisions.

List of Subjects in 7 CFR Part 457

Crop insurance, Pear, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2015 and succeeding crop years as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend §457.111 as follows:

- a. In the introductory text by removing “2011” and adding “2015” in its place;
- b. In section 1 by removing the definition of “varietal group”;
- c. By revising section 2:
- d. In section 3 by:
 - i. Removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” in the introductory text;
 - ii. Revising paragraph (a);
 - iii. Revising paragraph (b) introductory text by: removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” and removing “varietal group” and adding the term “type” in its place;
 - iv. Revising paragraph 3(b)(4)(iii);
 - v. Redesignating paragraph (c) as (d); and
 - vi. Adding new paragraph (c);
- e. In section 4 by removing the phrase “(Contract Changes)” in the introductory text;
- f. In section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)” in the introductory text;
- g. Amend section 6 by:
 - i. Removing the phrase “(Insured Crop)” in the introductory text;
 - ii. Revising paragraph (c);

- h. In section 7 by removing the phrase “(Insurable Acreage)” in the introductory text;
- i. Amend section 8 by:
 - i. Revising paragraphs (a) introductory text and (a)(1);
 - ii. Redesignating paragraph (a)(2) as paragraph (a)(3) and revising newly redesignated paragraph (a)(3);
 - iii. Redesignating paragraph (c) as paragraph (a)(2) and revising newly redesignated paragraph (a)(2);
 - iv. Redesignating paragraph (d) as paragraph (a)(4); and
 - v. Removing the phrase “(Insurance Period)” in paragraph (b) introductory text;
- j. Amend section 9 by:
 - i. Removing the phrase “(Cause of Loss)” in paragraph (a) introductory text;
 - ii. Adding new paragraphs (a)(6) and (7);
 - iii. Removing the phrase “(Cause of Loss)” in paragraph (b) introductory text;
 - iv. Removing paragraphs (b)(1) and (b)(1)(i) and (ii); and
 - v. Redesignating paragraphs (b)(2) and (3) as (b)(1) and (2) respectively;
- k. Amend section 10 by:
 - i. Designating the undesignated paragraph at the beginning of the section as paragraph (b) and removing the phrase “(Duties in the Event of Damage or Loss)” in newly redesignated paragraph (b);
 - ii. Redesignating paragraphs (a), (b), and (c) as paragraphs (b)(1), (2), and (3) respectively; and
 - iii. Adding a new paragraph (a);

- I. Amend section 11 by:
 - i. Removing the term “varietal group” in paragraph (b)(1) and replacing it with the term “type”;
 - ii. Revising paragraph (b)(2);
 - iii. Revising paragraph (b)(4);
 - iv. Removing the word “this” in paragraph (b)(6) and adding the word “the” in its place;
 - v. Revising paragraph (b)(7);
 - vi. In paragraph (c)(3)(iii)(A) by removing the number “180” and adding the number “165” in its place; and
 - vii. Removing the phrase “varietal group” in paragraph (c)(3)(iii)(B) and adding in its place the term “type”;
- m. By revising section 13.

The revisions and additions read as follows:

§457.111 Pear crop insurance provisions.

* * * * *

2. Unit Division

In addition to the provisions in section 34 of the Basic Provisions, optional units may be established if each optional unit is:

- (a) Located on non-contiguous land; or
- (b) A type specified in the Special Provisions.

3. * * *

(a) You may select different coverage levels and percent of price elections for each type in the county as specified in the Special Provisions. For example, if you choose 75 percent coverage level and 100 percent of the maximum price election for one type, you may choose 65 percent coverage level and 75 percent of the maximum price election for another type. If you elect the Catastrophic Risk Protection (CAT) level of insurance for any pear type, the CAT level of coverage will be applicable to all insured pear acreage for all types in the county.

(b) * * *

(4) * * *

(iii) Any other information that we request in order to establish your approved yield.

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any situation listed in sections 3(b)(1) through (b)(4). If the situation occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss (If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce the yield used to establish your production guarantee at any time we become aware of the circumstance);

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced

for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, production lost due to uninsured causes equal to the amount of the reduction in yield used to establish your production guarantee will be applied in determining any indemnity (see section 11(c)(1)(ii)). We will reduce the yield used to establish your production guarantee for the subsequent crop year.

* * * * *

6. * * *

(c) That are grown on trees that have produced an average of at least five (5) tons of pears per acre in at least one of the four most recent crop years unless the Special Provisions establishes a lower production level or we inspect such acreage and give our approval in writing; and

* * * * *

8. * * *

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins:

(i) In California, on February 1, except that if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day period and determine that it does not meet insurability requirements (You must provide any information that we require for the crop or to determine the condition of the orchard); or

(ii) In all other states, on November 21, except that, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10-day-period and determine that it does not meet insurability requirements (You must provide any information that we require for the crop or to determine the condition of the orchard).

(2) For each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of the insurance period for each crop year is:

(i) September 15 for all types of summer or fall pears;

(ii) October 15 for all types of winter pears; or

(iii) As otherwise provided for specific types in the Special Provisions.

* * * * *

9. * * *

(a) * * *

(6) Insects, but not damage due to insufficient or improper application of pest control measures; or

(7) Plant disease, but not damage due to insufficient or improper application of disease control measures.

* * * * *

10. * * *

(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.

* * * * *

11. * * *

(b) * * *

(2) Multiplying the results of section 11(b)(1) by your price election for each type, if applicable;

* * * * *

(4) Multiplying the total production to be counted of each type, if applicable, by your price election;

* * * * *

(7) Multiplying the result of section 11(b)(6) by your share.

Basic Coverage Example:

You have a 100 percent share of a 20-acre pear orchard. You elect 100 percent of the \$500/ton price election. You have a production guarantee of 15 tons/acre; you are only able to produce 10 tons of pears per acre. Your indemnity will be calculated as follows:

(1) 20 acres x 15 tons/acre = 300-ton production guarantee;

(2) \$500/ton (100 percent of the price election) x 300-ton production guarantee;

(3) = \$150,000 value of production guarantee;

(4) 20 acres x 10 tons = 200-ton production to count;

(5) \$500/ton (100 percent of the price election) x 200-ton production to count = \$100,000 value of production to count;

(6) \$150,000 value of production guarantee - \$100,000 value of production to count = \$50,000 loss; and

(7) \$50,000 x 100 percent share = \$50,000 indemnity payment.

[END OF EXAMPLE]

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13. Pear Quality Adjustment Endorsement

In the event of a conflict between the Pear Crop Insurance Provisions and this option, this option will control.

(a) This endorsement applies to any crop year, provided:

(1) The insured pears are located in a State designated for such coverage on the actuarial documents and for which there is designated a premium rate for this endorsement;

(2) You have not elected to insure your pears under the Catastrophic Risk Protection (CAT) Endorsement;

(3) You elect it on your application or other form approved by us, and do so on or before the sales closing date for the initial crop year for which you wish it to be effective. By doing so, you agree to pay the additional premium designated in the actuarial documents for this optional coverage; and

(4) You or we do not cancel it in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation of this endorsement by you.

(b) If the fresh pear production is damaged by an insured cause of loss, and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U. S. No. 1 in accordance with applicable United States Standards for Grades of Summer and Fall Pears or the United States Standards for Grades of Winter Pears as applicable, the amount of production to count will be reduced as follows:

(1) By two percent (2%) for each full one percentage point (1%) in excess of ten percent (10%), when eleven percent (11%) through sixty percent (60%) of the pears fail the grade standard; or

(2) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard.

(3) Notwithstanding sections 13(b)(1) and (2), if you sell any of your fresh pear production as U. S. No. 1 or better, all such sold production will be included as production to count under this option.

(c) Marketable production that grades less than U.S. No. 1 due to uninsurable causes not covered by this endorsement will not be reduced.

(d) Any adjustments that reduce your production to count under this option will not be applicable when determining production to count for Actual Production History purposes.

Optional Coverage for Pear Quality Adjustment Example:

You have a 100 percent share of a 20-acre pear orchard. You have a production guarantee of 15 tons/acre. You elect 100 percent of the \$500/ton price election. You are only able to produce 10 tons/acre and only 7.5 tons/acre grade a U. S. No. 1 or better. Assuming you do not sell any of your fresh pear production as U. S. No. 1 or

better, your indemnity would be calculated as follows:

(A) $20 \text{ acres} \times 15 \text{ tons per acre} = 300 \text{ tons production guarantee};$

(B) $300 \text{ tons production guarantee} \times \$500/\text{ton} = \$150,000 \text{ value of production guarantee};$

(C) The value of fresh pear production to count is determined as follows:

(i) $200 \text{ tons harvested production} \text{ minus } 150 \text{ tons that graded U.S. No. 1 or better} = 50 \text{ tons failing to make grade};$

(ii) $50 \text{ tons failing grade} / 200 \text{ tons of production} = 25 \text{ percent of production failing to grade U.S. No. 1 or better};$

(iii) In accordance with section 13(b)(1): $25 \text{ percent minus } 10 \text{ percent} = 15 \text{ percent in excess of } 10 \text{ percent allowance failing to make grade};$

(iv) $15 \text{ percent} \times 2 = 30 \text{ percent total quality adjustment for pears failing to grade U.S. No. 1};$

(v) $200 \text{ tons production} \times 30 \text{ percent quality adjustment} = 60 \text{ tons of pears failing to make grade};$

(vi) $200 \text{ tons production} \text{ minus } 60 \text{ tons failing to make grade} = 140 \text{ tons of quality adjusted fresh pear production to count};$

(vii) $140 \text{ tons of quality adjusted fresh pear production to count} \times \$500/\text{ton price election} = \$70,000 \text{ value of fresh pear production to count};$

(D) $\$150,000 \text{ value of production guarantee} \text{ minus } \$70,000 \text{ value of fresh pear production to count} = \$80,000 \text{ value of loss};$

(E) $\$80,000 \text{ value of loss} \times 100 \text{ percent share} = \$80,000 \text{ indemnity payment}.$

[END OF EXAMPLE]

Signed in Washington, D.C., on March 25, 2014.

Brandon C. Willis,
Manager,
Federal Crop Insurance Corporation.

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